

O'NEILL & BORGES LLC
250 MUÑOZ RIVERA AVENUE, SUITE 800
SAN JUAN, PUERTO RICO 00918-1813

JERRY LUCAS MARRERO
MEMBER
787-282-5729

TELEPHONE: (787) 764-8181
TELECOPIER: (787) 753-8944
JERRY.MARRERO@ONEILLBORGES.COM

April 4, 2018

BY MESSENGER

Hon. Tania Vázquez Rivera
Executive Director
Puerto Rico Environmental Quality Board
Environmental Agency Building – Cruz A. Matos
San José Industrial Park
1375 Ponce de León Avenue
San Juan, PR 00926-2604

Re: *Environmental Quality Board v. AES Puerto Rico, LP*
Administrative Order No: OA-18-TE-030
Response to Request for Documents and Information

Dear Mrs. Vázquez Rivera:

On behalf of our client, AES Puerto Rico, LP (“AESPR”), we acknowledge receipt of the Administrative Order in reference (the “Order”) and, within the timeframe required by the Puerto Rico Environmental Quality Board (“EQB”) therein, we herewith submit documents and information requested and related to the 2017 Annual Groundwater Monitoring Report (the “2017 Report”) referenced in the Order.¹

First and foremost, and as it is further explained below, AESPR and its environmental consultant are of the position that no conclusion should or ought to be drawn under or by the use of the 2017 Report as it is part [the first step] of a yet to be completed multi-phase approach ground monitoring program. This program is established in the federal regulations known as the CCR Rule promulgated by the U.S. Environmental Protection Agency (“USEPA”). Accordingly, any conclusion that groundwater used as potable water source was or has been contaminated by AESPR is unfounded. AESPR denies and will oppose any such a conclusion.

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¹ Note that we are submitting this response in the English language for the benefit of the U.S. Environmental Protection Agency who is being copied with this response.

I. Introduction

The Order acknowledges that AESPR published the 2017 Report "...[i]n compliance with the requirements established in Subtitle D of the Resource Conservation and Recovery Act ("RCRA", by its English acronym)..." And, based on the 2017 Report, it issues the Order as it considers necessary to obtain additional information and data for a complete evaluation.

Now, prior to addressing EQB's request for the production of certain documents and information, it is necessary to provide a brief overview of the origin and nature of the 2017 Report – as well as the multi-phase groundwater monitoring program in the CCR Rule under which AESPR prepared the Report.

First, in 2015, the USEPA published a final rule establishing the national minimum criteria for existing and new coal combustion residuals ("CCR") landfills, surface impoundments and lateral extensions of those units - known as the "CCR Rule". See 80 Fed. Reg. 21302 (April 17, 2015) (rule effective October 2015).² The groundwater monitoring multi-phase approach is one of the components of the CCR Rule. See 40 CFR Parts 257.90 through 257.98.

The CCR Rule establishes a multi-phase approach for the monitoring of groundwater and, among other requirements, provides for the sampling of groundwater, analyzing the data gathered, determining the source (or sources of impacts found) and evaluating whether any further assessment monitoring or corrective measures are warranted. As a first step, the CCR Rule requires that a groundwater monitoring program be developed and implemented – starting with a "detection monitoring phase." To implement this first phase, groundwater sampling data is collected from background monitoring wells to establish a background concentration level for constituents listed in the CCR Rule. See 40 CFR Appendix III to Part 257 – *Constituents for Detection Monitoring*, and 40 CFR Appendix IV to Part 257 – *Constituents for Assessment Monitoring*. Groundwater data is also collected from compliance monitoring wells for analysis of the same constituents and the results are compared to the background data using statistical analysis. This is the sampling result data contained in 2017 Report, which was provided to the EQB, published and made public as required under the CCR Rule.

If the "detection monitoring" results in a statistically significant increase of any constituent in Appendix III to Part 257 *vis a vis* its established background, then an assessment to determine the source or sources causing the increase may be undertaken. See 40 CFR 257.94. As you are aware a source or multiple sources may exist impacting the quality of the groundwater at a single location or area. That is why the USEPA included the next phase in the

² The AESPR temporary storage of its inventory of manufactured aggregate (or Agremax) is not a CCR unit subject to the CCR Rule. Nonetheless, as a conservative measure, AESPR has taken steps to satisfy the CCR Rule and has voluntarily prepared and published certain documents including the 2017 Report. The undertaking of these steps shall not be interpreted or construed in any way as an admission that AESPR's operations or facility are subject to or covered by the CCR Rule, and AESPR expressly reserves any rights and defenses available to it in connection with this and any related matters.

CCR Rule groundwater monitoring program known as the alternate source analysis/demonstration component. See 40 CFR 257.94(e)(2).

Notably, the AESPR facility is adjacent to a former petroleum refining and storage facility as well as other former industrial facilities or sites where it is known that USEPA supervised or is supervising or overseeing certain environmental investigations and implementation of corrective action - some of which for several years now. Available studies have documented that these other sources have released various contaminants in the groundwater beneath the area near and adjacent to the AESPR facility.

AESPR continues implementing the multi-phase groundwater monitoring approach – now moving to the next phase.

II. Production of Documents and Information

For ease of reference, we now address EQB's request using the same item number in the Order.

1. *Copy of the field documents that were generated during the sampling activities reported in the 2017 Report, including, but not limited to:*

- a. *Chain of custody for each of the samples collected;*
- b. *Field sheet with the "purge" data for each of the monitoring wells of the eight (8) samplings carried out in 2017;*
- c. *Monitoring wells installation documents;*
- d. *Calibration sheets for the instruments used to measure the parameters during the purging of each well;*

Response: The documents requested are attached herewith under **Exhibit 1**.

2. *Certified copy issued by a Licensed Chemist [authorized] to practice the profession in Puerto Rico of all of the analytical reports of each sample collected during the eight (8) samplings.*

Response: The documents requested are attached herewith under **Exhibit 2**.

3. *Raw data used by the laboratory that analyzed the samples collected.*

Response: AESPR's consultant has requested the laboratory to provide a copy of the raw data used and will provide the same once received, which is expected to be within the next thirty (30) days.

4. *Statistical analyses of the analytical results of the eight (8) samplings.*

Response: The analyses requested are attached herewith under **Exhibit 3**.

5. *Criteria and/or aspects taken into consideration to select the location of the background wells.*

Response: The criteria and/or aspects taken into consideration to select the location of the background wells are discussed in the document entitled "Groundwater Monitoring System & Sampling and Analysis Program AES Puerto Rico LP, Guayama," dated August 2017 (the "Groundwater Monitoring Plan"), herewith attached as **Exhibit 4**. The Groundwater Monitoring Plan was prepared as set forth in the CCR Rule.

6. *Groundwater sampling plan for the EQB's evaluation and approval.*

Response: The Groundwater Monitoring Plan is herewith attached as **Exhibit 4**. Because of the self-implementing nature of the CCR Rule, the Groundwater Monitoring Plan was not required to be pre-approved by the EQB or USEPA. A copy of the Groundwater Monitoring Plan was previously posted to AESPR's CCR Rule website, and thus can be obtained from http://aespuertorico.com/wp-content/uploads/2017/10/AESPuerto-Rico_Groundwater_Monitoring_System.pdf.

7. *Analytical results of a representative sample of the coal combustion residuals accumulated in the pile located adjacent to the facility, which analyze the same constituents that were analyzed for the groundwater samples collected during 2017 (No TCLP or SPLP).*

Response: The CCR Rule does not require the sampling and analysis of the material (Agremax) stored at the AESPR facility. Thus, it is not part of the multi-phase groundwater monitoring program being implemented.

8. *If there is a calendar for the monitoring of the water and the sediment accumulated in the retention ponds, provide a copy of the certified analytical results for the last three (3) samplings events carried out, including field documents and raw data.*

Response: There is no established calendar for the monitoring of the water and sediment that may be accumulated in the retention ponds – as it is not required in the CCR Rule. AESPR will make available to the EQB any certified analytical results as well as the raw data and field document for this type of sampling when done and available.

9. *A schedule of the monitoring events that will be carried out during 2018 and written authorization so that EQB personnel can be present at least at two (2) of those samplings.*

Response: AESPR has not yet scheduled calendar dates for the monitoring events required by the CCR Rule during 2018. Certainly, AESPR will meet the monitoring timeframes established in the CCR Rule and will share those calendar dates with EQB once scheduled providing at least five (5) work days in advance of the monitoring event to allow EQB personnel to be present.

III. Conclusion and Plead

Based on the foregoing and the production of documents and information herewith, we respectfully request EQB to acknowledge receipt of the same and rule that AESPR has complied with the Order; otherwise, AESPR respectfully requests EQB to schedule a meeting or hold an administrative hearing where the Order and its requirements are discussed in light of AESPR implementation of the CCR Rule.

IV. Notification

We are also notifying with a true and exact copy of this response, by certified mail – returned receipt requested, the following EQB personnel: **Mr. Manuel Claudio**, Manager, Land Pollution Control Division; **Mrs. Vanessa del Moral**, Manager, Guayama Regional Office; and **Samuel Acosta Camacho, Esq.**, Acting Manager of the Office of Legal Affairs at PO Box 11488, San Juan, PR 00910. We are also serving - as a courtesy - a true and exact copy of this response, by certified mail – returned receipt requested, to the following USEPA personnel: the **Regional Administrator of USEPA**, Region 2, 290 Broadway Avenue, New York, New York, 10007-1866; and, **Mrs. Carmen Guerrero**, USEPA-CEPD, City View Plaza II – Suite 7000, #48 Rd. 165 km 1.2 Guaynabo, PR 00968-8069.

Should you have any question regarding the foregoing, feel free to contact the undersigned at your convenience.

Cordially,

Jerry Lucas Marrero

Antonio L. Collazo

c: Mr. Manuel Matta
Mr. Marc Michael
Mr. Ramiro Rivera
Mr. Héctor Ávila
Sam Boxerman, Esq.
Pedro Reyes, Esq.
Mr. Alberto Meléndez